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9 Attorneys for Defendant
10 TARGET STORES, a division
11 of Target Corporation, erroneously
12 sued herein as Target Corporation

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 JON GILBERT,) Case No.: 08-01438-JL
12 Plaintiff,) [San Mateo County Superior Court Case
13 vs.) No.: CIV 469587]
14 TARGET CORPORATION, and Does 1-20,) ANSWER TO UNVERIFIED
15 inclusive,) COMPLAINT
16 Defendants.) Complaint Filed: January 25, 2008
17 _____)

18 COMES NOW Defendant TARGET STORES, a division of Target Corporation,
19 erroneously sued herein as Target Corporation, and for its answer to the complaint of plaintiff JON
20 GILBERT, on file herein, admits, denies and alleges the following:

21 GENERAL ALLEGATIONS

22 1. Answering paragraph 1, this answering defendant admits the allegations contained
23 therein.

24 2. Answering paragraph 3, this answering defendant states that it has no information
25 or belief concerning the subjects of the allegations therein sufficiently enabling it to answer said
26 paragraph, and on that ground, denies each and every, all and singular, generally and specifically,
27 the allegations contained therein.

28 3. Answering paragraph 5(a)(1), this answering defendant admits that Target Stores is

1 a division of Target Corporation, and is a Minnesota corporation whose principal place of business
2 is in Minnesota.

3 4. Answering the allegations in paragraph 6(a) and (b), this answering defendant states
4 that it has no information or belief concerning the subjects of the allegations therein sufficient to
5 enable it to answer said paragraph, and on that ground, denies each and every, all and singular,
6 generally and specifically, the allegations contained therein.

7 5. Answering the allegation in paragraph 8(c), this answering defendant denies each
8 and every allegation contained therein.

9 6. Answering paragraph 9(a), this answering defendant denies each and every
10 allegation contained therein.

11 7. Answering paragraph 10, this answering defendant admits that there are two (2)
12 causes of action for Premises Liability and General Negligence attached.

13 8. Answering paragraph 11(a), (c), (d) and (f), this answering defendant denies each
14 and every allegation contained therein.

15 9. Answering paragraph 13, this answering defendant denies each and every allegation
16 contained therein.

17 10. Answering paragraph 14, this answering defendant denies each and every allegation
18 contained therein.

19 11. Answering paragraph 15, this answering defendant states that it has no information
20 or belief concerning the subjects of the allegations therein sufficient to enable it to answer said
21 paragraph, and on that ground, denies each and every, all and singular, generally and specifically,
22 the allegations contained therein.

23 **FIRST CAUSE OF ACTION – Premises Liability**

24 12. Answering paragraph Prem. L-1, this answering defendant denies each and every
25 allegation contained therein.

26 13. Answering paragraph Prem. L-2, this answering defendant denies each and every
27 allegation contained therein.

28 14. Answering paragraph Prem. L-5, this answering defendant states that it has no

1 information or belief concerning the subjects of the allegations therein sufficient to enable it to
 2 answer said paragraph, and on that ground, denies each and every, all and singular, generally and
 3 specifically, the allegations contained therein.

4 **SECOND CAUSE OF ACTION – General Negligence**

5 15. Answering paragraph GN-1, this answering defendant denies each and every
 6 allegation contained therein.

7 **DEMAND FOR JURY TRIAL**

8 This answering defendant demands a jury trial.

9 **AFFIRMATIVE DEFENSES**

10 **COMES NOW**, Defendant TARGET STORES, a division of Target Corporation,
 11 erroneously sued herein as Target Corporation, and for its answer to the complaint of plaintiff on
 12 file herein alleges as follows:

13 **AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 14 **VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
 15 **THEREOF**, this answering defendant is informed and believes and thereon alleges that plaintiff
 16 was comparatively at fault in the manner and style as set forth in the case of *Li v. Yellow Cab Co.*
 17 (1975) 13 Cal.3d 804, and defendant prays that any and all damages sustained by said plaintiff be
 18 reduced by the percentage of his negligence.

19 **AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
 20 **VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
 21 **THEREOF**, this answering defendant is informed and believes and thereon alleges that the
 22 damages complained of, if any there were, were proximately contributed to or caused by the
 23 carelessness, negligence, fault or defects created by the remaining parties in this action, or by other
 24 persons, corporations or business entities unknown to this answering defendant at this time, and
 25 were not caused in any way by this answering defendant, or by persons for whom this answering
 26 defendant is legally liable.

27 Should this answering defendant be found liable to plaintiff, which liability is expressly
 28

1 denied, said defendant is entitled to have this award against it abated, reduced or eliminated to the
2 extent that the negligence, carelessness, fault or defects created by the remaining parties in this
3 action, or by said other persons, corporations or business entities, contributed to plaintiff's
4 damages, if any.

5 **AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
6 **VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
7 **THEREOF**, this answering defendant is informed and believes and thereon alleges that neither the
8 complaint nor any of its alleged causes of action states facts sufficient to constitute a cause of
9 action against this answering defendant.

10 **AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
11 **VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
12 **THEREOF**, this answering defendant is informed and believes and thereon alleges that plaintiff
13 failed to mitigate his alleged damages as required by law.

14 **AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
15 **VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
16 **THEREOF**, this answering defendant is informed and believes and thereon alleges that as a
17 matter of law, the condition constituted a trivial defect.

18 **AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
19 **VERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
20 **THEREOF**, this answering defendant is informed and believes and thereon alleges that plaintiff
21 knew, or in the exercise of ordinary care should have known, of the risks and hazards involved in
22 the undertaking in which he was engaged, but nevertheless and knowing these things, did freely
23 and voluntarily consent to assume all the risks and hazards involved in the undertaking.

24 **WHEREFORE**, this answering defendant prays as follows:

- 25 1. That plaintiff take nothing by his complaint and that this answering defendant be
26 dismissed hence;
- 27 2. For reasonable attorneys' fees;
- 28 3. For costs of suit incurred herein; and

4. For such other and further relief as the Court deems fit and proper.

DATED: March 13, 2008

BOORNAZIAN, JENSEN & GARTHE
A Professional Corporation

By: Gail C. Trabish
GAIL C. TRABISH, ESQ.

GAIL C. TRABISH, ESQ.
Attorneys for Defendant
TARGET STORES, a division of
Target Corporation, erroneously sued
herein as Target Corporation

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CERTIFICATE OF SERVICE
(28 U.S.C. §1746)

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date indicated below, at the above-referenced business location, I sealed envelopes, enclosing a copy of the **ANSWER TO UNVERIFIED COMPLAINT**, addressed as shown below, and placed them for collection and mailing following ordinary business practices to be deposited with the United States Postal Service on the date indicated below:

Donald L. Galine, Esq.
Law Offices of Donald L. Galine
411 Borel Avenue, Ste. 500
San Mateo, CA 94402
(650) 345-8484 Phone
(650) 345-9875 Fax

Attorneys for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California, on March 13, 2008.

Alexine J. Braun

Alexine L. Braun

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